

Office Action Summary

Application No.

09/596,806

Applicant(s)

BUNCKE, HARRY J.

Examiner

Kathryn Odland

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003 and 04 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This is a response to the amendments dated October 15, 2003 and December 4, 2003. Claims 1-11 are pending. The amendments to the specification and title are acknowledged.

Response to Arguments

1. Applicant's arguments with respect to claims 1, 3, 9 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art disclosed in the current applications (Figures 1-4) in view of Swiggett in US Patent No. 4,485,817.

That considered prior art in the current application specification discloses a device (10) for applying non-penetrating clips to small blood vessels or other wound sits or tissue separation sites where suturing or other wound closure techniques would be impossible or undesirable having: a hand-held clip applier (10) having a handle (16) suitable for gripping in the hand of a surgeon; a clip storing and dispensing stem (14) extending from a forward end of the handle, the

stem (14) having a tip (12) at a remote end, the tip (12) including means for dispensing and serially applying metal clips in non-penetrating engaging configuration against sections of tissue on either side of a wound or tissue separation to clamp the two sections of tissue together, upon the receipt of mechanical force to a clip-applying component of the stem, as recited on pages 8-10 of the current application specification and seen in figures 1-4; a movable member within the handle which, when caused to move by a force applied from outside the handle, is effective to cause movement of the clip-applying component in the stem so as to cause dispensing and application of a clip, as recited on pages 8-10 of the current application specification and seen in figures 1-4; linkage means engaged with the movable member within the handle and extending to a position in the handle capable of receiving a pushing force in the handle capable of receiving a pushing force from the exterior of the handle (that achieved via 18), as recited on pages 8-10 of the current application specification and seen in figures 1-4; and a handle that is round so as to be capable of comfortable hand gripping in any rotational orientation, as recited on pages 8-10 of the current application specification and seen in figures 1-4.

However, that considered prior art in the current application specification does not explicitly recite a flexible cable release device having a cable sheath, and an internal cable capable of delivering a compressive pushing force through the sheath, a hand operable actuator at a remote hand-grippable end of the cable release, for applying a pushing force to slide the cable through the sheath

so as to cause extension of a pusher tailpiece out of a proximal end of the cable sheath when the hand operable actuator is engaged, the sheath at the proximal end having means for connection to the handle of the hand-held clip applier in a position to apply force to the linkage means in the handle by motion of the pusher tailpiece, thus advancing the clip-applying component to dispense and apply a clip when the thumb button on the flexible cable release device is pushed, the cable sheath and internal cable being sufficiently flexible as to avoid movement of the tip when the hand operable actuator is moved to apply the pushing force, whereby the cable release device connected to the clip applier the hand-held clip applier can be held very steady in one hand with its tip under the microscope while the force to apply a clip is supplied at the remote end of the cable release device, avoiding any movement of the tip at the instant of the clip application; a flexible remote force-transmitting device having a tubular sheath, and an internal movable medium capable of delivering a force through the tubular sheath, a remote actuator at a remote end of the flexible device for applying a force to slide the movable medium through the sheath so as to cause movement of a tailpiece at a proximal end of the tubular sheath when the actuator is engaged, the sheath at the proximal end being connected to the handle of the hand-held clip applier in a position to apply force to the linkage means in the handle by motion of the tailpiece, thus moving the linkage means and movable member within the handle, and thus advancing the linkage means and movable member within the handle, and thus advancing the clip-applying component to dispense and apply a

clip when the remote actuator on the flexible force-transmitting device is engaged, the tubular sheath and medium being sufficiently flexible as to avoid movement of the tip when the remote actuator is engaged and moved to apply force; a remote flexible force-transmitting device that has a threaded fitting at its proximal end, the tail end of the handle of the clip applier having a mating thread so that the flexible device is removable from the clip applier; a flexible force-transmitting device that has a cable release device, the movable medium having an internal cable in the tubular sheath and the remote actuator has a thumb button; a flexible force-transmitting device that has a hydraulic line having liquid as the movable medium, wherein the remote end of the flexible device has a piston and cylinder connected to put pressure on the liquid when the actuator is depressed to force the liquid through the hydraulic tube, the proximal end of the flexible device has a second piston and cylinder with the piston connected to the pusher tail piece so that the linkage means and the movable member are pushed forward hydraulically when the actuator is depressed; a remote actuator that is a thumb button connected to the piston at the remote end of the flexible device.

On the other hand, Swiggett teaches a flexible cable release device having a cable sheath (via 14 and associated components), and an internal cable (such as 68) **capable of** delivering a pushing force through the sheath (14), a hand operable actuator (12) at a remote hand-grippable end of the cable release, as recited in column 1, lines 1-15 and column 2 and seen in figures 1-7, the sheath (14) at the proximal end having means for connection to the actuator (12)

the cable sheath and internal cable being **sufficiently** flexible as to avoid movement of the tip when the hand operable actuator is moved to apply the pushing force, whereby the cable release device connected to the applier the hand-held applier **can be** held very steady in one hand with its tip under the microscope while the force to apply is supplied at the remote end of the cable release device, avoiding any movement of the tip at the instant of the clip application, as recited in columns 1-6 and seen in figures 1-7; a flexible remote force-transmitting device having a tubular sheath (14), and an internal movable medium capable of delivering a compressive pushing force through the tubular sheath (14), a remote actuator (12) at a remote end of the flexible device for applying a pushing force to slide the movable medium through the sheath (14) so as to cause extension of a pusher tailpiece out a proximal end of the tubular sheath (14) when the actuator (12) is depressed, as recited in columns 1-6 and seen in figures 1-7. Thus, Swiggett teaches a hydraulic actuated remote clip applier where the scope of the invention is for surgical staplers, as stated in the abstract, column 1, lines 1-15 and column 2, for example.

Therefore, it would be obvious to one with ordinary skill in the art to modify the prior art disclosed in the current application specification to provide the remote actuator and cables as taught by Swiggett for the purpose of having an actuation button remote from the handle (16 of the current application specification), thereby providing more stability to the system. Remote actuation via an applicator is known in the art for the purpose of proper placement and

steadiness at the tip. Moreover, this combination would also obviously yield a remote flexible force-transmitting device that has a threaded fitting at its proximal end, the tail end of the handle of the tip applier having a mating thread so that the flexible device is removable from the clip applier as well as the other specifics that would necessarily yield from the combination would also be obvious to one with ordinary skill in the art. Further, the method would further be obvious to one with ordinary skill in the art, see apparatus rejection above. Moreover, a remote actuator that is a thumb button or foot pedal would also be obvious to one with ordinary skill in the art. The current application specification does not demonstrate the criticality for the thumb button or foot pedal. Further, references of foot pedal remote actuation and thumb buttons have been provided and again both are known in the art, along with remote actuation.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are as follows: US Patent No. 6,599,298; US Patent No. 5,779,130; US Patent No. 4,754,909; US Patent No. 5,258,007; and US Patent No. 4,610,383.
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Henry Bennett
Supervisor Patent Examiner
Group 3700

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